

CHAPTER 7 - SPECIAL CIVIL CASE PROCEEDINGS

RULE 7.0 SMALL CLAIMS COURT PROCEEDINGS

All local rules pertaining to limited jurisdiction civil cases shall apply to small claims cases except the provisions pertaining to status conferences and arbitration. Instead of setting a separate status conference, plaintiffs will be required to appear on the date of trial regardless of whether service has been effected. If service has not been effected the Court will:

1. Determine when service can be effected and reset the trial date;
2. Set a future status conference; or
3. Dismiss the case for lack of diligence.

(Effective 5/19/98; Amended 7/1/99)

RULE 7.1 SMALL CLAIMS - UNTIMELY APPEALS

An untimely appeal will not be filed by the clerk unless a motion authorizing the untimely filing of the appeal is heard on the Law and Motion calendar and granted. *(Effective 5/19/98; Amended 7/1/99)*

RULE 7.2 LIMITED JURISDICTION UNLAWFUL DETAINER PROCEEDINGS

1. All local rules pertaining to limited jurisdiction civil cases shall apply to limited jurisdiction unlawful detainer cases except the provisions pertaining to case management, arbitration and status conferences. Status conferences for unlawful detainer cases will be set as follows:

- A. A status conference will be set approximately 20 days after filing of the complaint unless:
 - (1) The case has already been set for trial.
 - (2) The case has been designated as a general civil matter because possession is no longer at issue. (Civil Code §1952.3) and the case is not entitled to preference pursuant to CCP §1179(a); or
 - (3) A disposition has been entered. A dismissal judgment, Notice of Settlement, or a transfer terminates or disposes of a case.

B. No status conference questionnaire is required.

2. Within twenty-five (25) days after filing an unlawful detainer complaint, the plaintiff must file a Memorandum to Set unless a responsive pleading other than an Answer, a Request for Entry of Default or Request for Dismissal has been filed. By filing a Memorandum to Set, a party indicates that the case is at issue and will be ready to go to trial on the date assigned.

Failure to comply with this rule will result in issuance of a notice of an Order to Show Cause and/or Status hearing ten (10) days after the date the Memorandum to Set must be filed, unless otherwise ordered by the Court. An Order to Show Cause and/or Status hearing will require attendance of plaintiffs and may require the attendance of all parties and counsel who have appeared in the action to discuss the status of the case, to determine whether the case is ready for trial, to set time limits, and/or to issue sanctions in the absence of good cause shown.

3. When the Memorandum to Set is filed, if the proof of service complies with these rules in all respects and no jury trial is demanded, the clerk shall, not sooner than five (5) days thereafter, assign the earliest date for court trial within the next twenty (20) days and notify all parties in writing of the trial date.

If a jury trial is demanded by any party, the clerk shall assign the earliest date for settlement conference within the next ten (10) days and shall assign the earliest jury trial date within the next twenty (20) days and notify all parties in writing of both dates.

4. Within six months after a clerk's judgment for restitution is entered, the plaintiff must set the case for ex-parte prove-up hearing, unless the money damages are dismissed. Appearance will not be required if a declaration is submitted pursuant to Code of Civil Procedure, Sections 585(b) and (d).

5. If the tenant(s) voluntarily or by court order, ceases to be in possession of the property at any time prior to thirty (30) days before commencement of the trial, all parties shall immediately notify the Court in writing.

6. The following procedure has been established to implement *Arrieta v. Mahon*, 31 Cal.3d 381.

A. Any person, who by himself or through an agent or attorney, has in person delivered to the Sheriff at his office or at the premises no later than the time of eviction, a written claim of right to possession on the Sheriff's official form pursuant to Section 715.010(c) of the Code of Civil Procedure, shall not be evicted until the court has heard and determined the validity of the claim.

B. The Court shall acquire personal jurisdiction over the claimant to hear and decide the claim upon presentation of the claim to the Sheriff by the claimant, his agent, or attorney.

C. The Sheriff shall give notice of hearing directly to the claimant, his agent or attorney at the Sheriff's office or at the premises. The hearing date shall be not less than five (5) nor more than fifteen (15) days after the Sheriff's receipt of the claim.

D. If, upon hearing, the Court determines that the claim is invalid, the Court may order the Sheriff to proceed with the enforcement of the Writ of Possession. If, upon hearing, the Court determines that the claim is valid, no further action shall be taken against the claimant except according to proceedings conducted under Chapter 4 commencing with Section 1159 of the Code of Civil Procedure.

E. The standard form of Claim of Possession and Notice of Hearing shall be subject to the approval of the Judges of this Court.

(Effective 5/19/98; Amended 7/1/99 and 7/1/2004)

RULE 7.3 UNINSURED MOTORIST CASES

GENERAL JURISDICTION CIVIL CASES

1. Cases shall be designated as "Uninsured Motorist" if they are personal injury or property damage actions filed against a defendant(s) who is an uninsured motorist and plaintiff's claim is subject to an arbitration provision of an insurance policy which applies to all or part of the loss claimed by plaintiff.

2. Cases designated by the plaintiff as Uninsured Motorist may be re-designated as "General" on motion filed in the appropriate law and motion department of either party made within one hundred eighty (180) days of filing of the complaint, or upon motion by the Court at any time.

3. Cases designated as Uninsured or Underinsured Motorist shall be placed on a dismissal docket on the first court date twelve (12) months after the case has been designated Uninsured or Underinsured pursuant to Rule 4.1(d) unless:

A. The action has been dismissed;

B. A formal petition for arbitration has been filed in this Court or another Court of Record of the State of California or the United States;

C. A telephonic tentative ruling shall be issued in all cases set for hearing as a result of the filing of a timely certificate of exception.

A telephonic tentative ruling shall be issued in all cases in which the court has continued a prior hearing set as a result of the filing of a timely certificate of exception or as a result of an order to show cause issued following the failure to file such a certificate providing that a declaration is filed by the compliance date set at the time of the prior hearing. The declaration must state same information, updated, as required in the initial certificate of exception.

4. Within twenty (20) days of the conclusion of the arbitration pursuant to an arbitration provision of an insurance policy, the plaintiff shall notify the Court that said arbitration has been concluded.

(Effective 5/19/98; Amended 7/1/99)

RULE 7.4 ASBESTOS CASES

1. A case shall be designated as Asbestos if a primary theory of recovery concerns exposure to asbestos fibers or products in any form, whether the theory plead is wrongful death, personal injury, product liability or other cause of action.

2. It is the policy of the Court that:

A. Cases designated as "asbestos" shall be assigned to a Judge designated by the Presiding Judge to manage all pre-trial matters;

B. The Judge designated to manage all pre-trial matters in "asbestos" cases shall issue general orders as necessary to implement these rules and shall have all the authority vested in the Case Management Conference Judge.

3. Within forty five (45) calendar days of filing the complaint:

A. The complaint shall be served and a proof of service as to each named defendant filed with the Court;

B. The plaintiff shall obtain a date from the designated "asbestos" department for an Initial Case Management Conference and provide notice of said conference to all named defendants who have been served in the action. The Initial Case Management Conference shall be scheduled no later than one hundred and twenty (120) days from the filing of the complaint.

4. Within forty five (45) calendar days of the filing of the service of the complaint:

A. All responsive pleadings shall be filed and served;

B. All cross-complaints shall be served upon the cross-defendants and proof of service as to each cross-defendant shall be filed and served upon all parties who have appeared in the action. Any party adding new parties to the action shall provide notice to said parties of the next scheduled conference or hearing.

5. Standard Interrogatories:

A. All standard interrogatories to plaintiffs shall be deemed served upon plaintiff when the complaint is filed and answers shall be served within sixty (60) days of the filing of the complaint;

B. All standard interrogatories to defendants and cross defendants shall be deemed served with the complaint or cross complaint and answers shall be served pursuant to CCP 2030 or order of the Court.

6. The Initial Case Management Conference shall be conducted within one hundred twenty (120) calendar days after the filing of the original complaint or as otherwise ordered by the Court.

A. The Initial Case Management Conference shall be attended by counsel thoroughly familiar with the case. All deadlines and scheduling dates ordered by the Court or stipulated to by counsel attending the status conference, shall be binding on trial counsel;

B. At the Initial Case Management Conference, deadlines shall be set as appropriate for exchange of written demands and offers, stipulations, completions of all depositions and interrogatories, the filing of motions, disclosing exhibits and designation of experts;

C. Consolidation shall be considered for the purpose of hearing motions, settlement conferences and/or trial.

7. A Second Case Management Conference shall be conducted one hundred eighty (180) calendar days after the First Case Management Conference or as otherwise ordered by the Court. At said conference, the Court shall:

A. Review discovery;

B. Schedule settlement conferences as necessary;

C. Schedule the trial date and Conference dates;

D. Consider diversion of the case to a special master, hearing officer, judge pro tempore, order the case to judicial arbitration or other appropriate alternative;

E. Set a deadline for an independent medical examination(s).

8. A Third Case Management Conference shall be conducted sixty (60) calendar days before trial or as otherwise ordered by the Court. At the Third Case Management Conference, the Court shall:

A. Order a final discovery deadline;

B. Rule on pending motions;

C. Dismiss or substitute fictitious defendants;

D. Schedule summary judgment or summary adjudication of issues, if appropriate.

9. A Fourth Case Management Conference shall be conducted thirty (30) days before trial or as otherwise ordered by the Court. At the Fourth Case Management Conference, the Court shall:

A. Confirm the trial date and trial management and settlement conference date;

B. Review previous orders for compliance;

C. Assure readiness for trial and make other necessary or appropriate pre-trial orders.

10. A final Case Management Conference shall be conducted fourteen (14) days before trial or as otherwise ordered by the Court.

(Effective 5/19/98; Amended 7/1/99)

RULE 7.5 PETITIONS TO COMPROMISE THE CLAIM OF A MINOR

1. Petition Contents: All petitions to compromise the claims of minors or incompetent persons must comply with the following rules and applicable California Rules of Court:

A. The petition shall contain a full disclosure of all information which has any bearing upon the reasonableness of the compromise or settlement, such as the sums, if any, to be paid to the other claimants in the same case.

B. Attorney Fees: On any application for approval of a compromise of a claim under the provisions of Sections 372 of the Code of Civil Procedure and of the Probate Code, the following attorney's fees will be considered reasonable under normal circumstances:

- (1) Settlement prior to action being assigned to a department for trial: 25% of the recovery after deducting allowable costs.
- (2) For recovery of judgment or obtaining settlement during trial and after a substantial part of plaintiff's case has been introduced, after any appellate proceeding, any fees allowed shall be determined according to the particular circumstances involved. In cases involving unusual circumstances or conditions, the fees shall be subject to variation by the Court to meet such circumstances or conditions.
- (3) Before computing all fees on the basis of the amount of the judgment or settlement, the costs paid or incurred by the attorney shall be deducted therefrom. Such costs shall be itemized and appropriate vouchers or other evidence presented in support thereof.

2. Payment of Medical and Hospital Expenses: Procedure for Petition: In all cases where payment for medical or hospital care or treatment for the minor is sought, the petition shall set forth the names of the hospitals, doctors or other agencies furnishing such care, together with the amount of the respective charges therefor, and the name of the person or agency by whom paid and/or to whom payment is proposed.

3. Payment Out of Funds of the Minor: Allowance for payment or reimbursement thereof out of the funds of the minor shall be made only as hereinafter provided:

A. Reimbursement to Parents or Guardian: A parent shall only be allowed reimbursement for such expenditures actually made by the parent or guardian on behalf of the minor in connection with the case or provisions of medical treatment for the minor and if the parent or guardian is able to demonstrate that failure to receive such reimbursement would involve an actual hardship on the parent, guardian or on other members of the minor's immediate family.

B. Reimbursement to Health Plans: Reimbursement to health plans or insurance companies by reason of a subrogation clause in the insurance contract shall be allowed only when the validity and propriety of the claim is established by competent evidence furnished by the insurer and the petitioner.

C. Direct Payment of Unpaid Medical Bills to Private or Governmental Agencies: Where bills for such care and treatment of the minor by either private or governmental facilities remain unpaid at the time of the hearing, the Court shall determine whether or not payment therefor should be ordered out of the minor's funds or by a responsible parent. If the Court finds that payment by such parent would involve an actual hardship on the parent or on other members of the minor's immediate family, the Court shall, in its Order approving the compromise, direct the payment of such bills out of the settlement proceeds.

4. General Provisions of the Order Approving Compromise: The Order approving the compromise of the minor's claim shall be prepared by counsel and shall set forth fully the following:

- A. The total amount of the payment approved in compromise of the claim.
- B. The amount of all attorney's fees and costs to be allowed.
- C. The amount of all medical expenses to be paid or reimbursed together with names of the payees.
- D. If the Court shall order that all or any part of the money to be paid under compromise be deposited in any authorized depository, the Court shall further provide:
 - (1) That the account shall be established in the name of petitioner or other authorized person, as trustee for subject minor;
 - (2) That a certified copy of the Court's order shall be delivered by petitioner's attorney to the depository with the amount to be deposited;
 - (3) That said attorney shall provide a form of receipt to be executed by said depository and shall cause said receipt to be returned to the Civil Clerk's Office for filing within ten days after making of said deposit;
 - (4) That the funds so deposited and the interest thereon shall not be withdrawn except upon order of the Court during the minority of subject minor; and
 - (5) That on and after the date (to be set forth) when the minor becomes 18 years of age, the remaining balance in the trust fund shall be subject to withdrawal by the order of the Court.

5. Welfare Recipient, Order Approving Compromise: The petition shall state whether or not the minor or his family is receiving any type of public assistance and, if so, the source and amount thereof. If the minor or his family is the recipient of such assistance, the order shall provide that the County Welfare Department may from time to time petition for an allowance from the trust fund for the support of the minor and that the trust fund shall not be used for current support of the minor unless specifically authorized by the Court. The Clerk of the Court wherein the order is made shall notify the County Welfare Department of the making of such order by the Court.

Upon the filing of any such petition by the County Welfare Department, the matter will be determined by the Presiding Judge or such other judge as the Presiding Judge may designate.

(Effective 5/19/98; Amended 7/1/99)